

NEW YORK HERALD, SATURDAY, APRIL 9, 1859.

Section for Libel at the Suit of Edwin Forrest
against S. P. Willis.

COURT OF COMMON PLEAS.

Before Hon. Judge Eliot.

April 8.—Edwin Forrest vs. N. P. Willis.—This was an action for libel, in which damages are laid at \$20,000. It was tried some five years ago, when the jury disagreed. Mr. Forrest was in court all day, and was represented by Mr. Van Buren and Mr. Carpenter. Mr. Willis was not present. Messrs. Gerard and Fancher conducted the defense. When the jury were called, Mr. Fancher objected to Messrs. Ogle and Cappa. Mr. Basque having read of and expressed an opinion on the controversy between Mr. Forrest and Mr. Willis, as expressed by Mr. Van Buren, who also challenged Mr. Chapman. The jury returned a verdict for the plaintiff for \$1,000.

1. Addison D. Chapin, builder.
2. Michael Fitzsimons, roofer.
3. John Johnson, sailmaker.
4. Richard H. Hinckley, mercer.
5. Charles L. Jones, sawing maker.
6. George Whittlesey, grocer.
7. Henry W. Reynolds, yesterholder.
8. John W. Stoltz, Jr., leather merchant.
9. John B. Waterford.
10. Charles Wagner, grocer.
11. David S. Englehart, merchant.
12. Charles Wagner, grocer.

Mr. Fancher said that to the complaint, he had up to the Court three affidavits to the effect of these were given to him by an officer of the court of Justice Ingraham; he therefore moved that it be now considered as out of the cause, and that the defendant should have the affirmative and be permitted to open the case to the jury.

Mr. Carpenter said that the affidavits upon the record were sufficient to sustain the order for the defendant to withdraw his second answer.

Mr. Van Buren remarked that not only was the waiver made, but it was made at the express request of defendant.

Judge Eliot said that under the decision of the Court of Appeals the ruling of the Judge, in giving the second answer to be withdrawn, was erroneous. The pleadings should stand as they are.

Defendant excepted.

Mr. Van Buren put in their place of abatement which was, that there was an action for the same case pending in the United States Court and he never discontinued.

He submitted that the defendant was entitled to open the case, as he had done in the first instance.

Mr. Van Buren said that the suit had been discontinued and the case stood, and that it had been ruled over and over again that a suit in the United States Court was no better to proceedings in the State courts.

Judge Eliot said that the first plea of abatement was allowed to bar this suit; the plaintiff had a right to waive a rule made in his favor.

The Court then said that the affidavit was given to the plaintiff.

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